

04 NCAC 24A .0105 is proposed for amendment as follows:

04 NCAC 24A .0105 DEFINITIONS

(a) In addition to the terms defined in G.S. 96, the following definitions apply whenever these terms are used in this Chapter:

- (1) “Additional claim” means the reopening of a valid initial claim for unemployment insurance benefits after a claimant, as defined in Item (16) of this Rule, ceased filing a weekly certification as defined in G.S. 96-14.9, for one or more weeks due to intervening employment. The first week of eligibility filed after a claim has been reopened shall constitute a waiting period week if all eligibility requirements set forth in G.S. 96-14.9 are met.
- (2) “Agent state” means any state from which, or through which a claimant files a claim for benefits from another state.
- (3) “Adjudicator” means an employee of DES appointed to conduct an informal investigation and render a determination as required by G.S. 96-15(b).
- (4) “Appeal” means a submission by a party with statutory appeal rights requesting the Appeals Section of DES or the Board of Review to review a determination or decision that is adverse to that party.
- (5) “Appeals Referee” or “Hearing Officer” means an attorney appointed to hear or decide an appeal from a determination by an adjudicator and issues involving the rights, status, and liabilities of an employer pursuant to the provisions of G.S. 96-4(q) or 96-15(c).
- (6) “Appeals Section” means the section within DES where Appeals Referees conduct quasi-judicial administrative evidentiary hearings and make decisions in contested cases for unemployment insurance benefits. The Appeals Section also consists of support staff that assists Appeals Referees.
- (7) “Application for a position” means supplying the information required by an employer to place an individual in a particular position or opening. Such information may include proof of the qualifications or license required by the position or opening, employment history, and personal information, such as full name, Social Security Number or other identification number, telephone number, and current address. An application for a position may be accomplished in whatever manner acceptable to an employer, including the completion of a designated form, the provision of a written resume, or verbally.
- (8) “Authorized Representative” means an individual authorized by an employer or employing unit to act on the employer or employing unit’s behalf before DES.
- (9) “Base period” means as defined in 96-1(b)(3). Calendar quarters are January through March, April through June, July through September, and October through December.
- (10) “Benefit week” means a period of seven consecutive calendar days, ending at 11:59 pm on Saturday.
- (11) “Benefit wage credits” means wages used to determine a claimant’s monetary eligibility for benefits. Benefit wage credits consist of the wages a claimant received or should have received during the claimant’s base period of employment and to include those wages that were awarded and paid to the

- claimant after the base period pursuant to a court order; a National Labor Relations Board determination; another adjudicative agency; or by private agreement, consent, or arbitration for loss of pay because of discharge. DES shall credit the awarded wages to the quarter in which the wages should have been paid.
- (12) “Board of Review” means as defined in G.S. 96-15.3 and is the body that conducts “higher authority review” of appeals arising from the decisions of the Division, tax liability hearings, and labor disputes. The Board of Review is also referred to as the “Board” or “BOR.”
- (13) “Calendar Period” means the fifty-two week period beginning with the first day of a week in which an individual first files a valid claim for benefits and registers for work. The week begins on the first Sunday preceding the initial claim filed and ends the following year at 11:59 p.m. on Saturday.
- (14) “Charging cycle” means each calendar quarter following the prior reporting cycle, during which the employer's account is assessed and charged for erroneous unemployment insurance benefit payments resulting from untimely or inadequate responses, as defined in 04 NCAC 24D .0301, from the employer to particular Requests for Separation Information during that charging cycle if the employer met or exceeded the adequacy threshold in the prior reporting cycle.
- (15) “Chief Appeals Referee” includes the Chief Appeals Referee’s designee, unless otherwise stated.
- (16) “Claimant” means an individual who files an unemployment insurance benefits claim for payments as provided in G.S. 96-14.1.
- (17) “Clear and convincing evidence” means evidence indicating that the thing to be proved is highly probable or reasonably certain.
- (18) “Customarily,” as the term is used in G.S. 96-16, means during at least seventy-five percent of the calendar years of an observation interval.
- (19) “Customary” as used in G.S. 96-15.01 means the usual and habitual number of hours worked.
- ~~(19)~~(20) “Day” means a calendar day.
- ~~(20)~~(21) “Delivery service” means an authorized designated carrier pursuant to Rule 4(j) of the North Carolina Rules of Civil Procedure and 26 U.S.C. 7502(f)(2).
- ~~(21)~~(22) “DES website” means the internet address found at www.des.nc.gov.
- ~~(22)~~(23) “Due diligence” means the measure of carefulness, precaution, attentiveness, and good judgment as to be expected from, and exercised by a reasonable and prudent person under the particular circumstances.
- ~~(23)~~(24) “Effective date of a claim” means either the benefit year beginning on the Sunday preceding the payroll week ending date if the claimant is payroll attached, or the benefit year beginning on the Sunday of the calendar week within which a claimant filed a valid claim for benefits and registered for work if the claimant is not payroll attached.
- ~~(24)~~(25) “Electronic transmission” means ~~transmission by facsimile or internet.~~ delivery to an electronic mail address at which an individual or employer has consented to receive notices, documents, or other communications;

1 or posting on an electronic network or site accessible by internet through use of a mobile application,
2 computer, mobile device, tablet, or any other electronic device, and sending separate notice of the
3 posting, or using any other delivery method to which the individual or employer has consented.
4 Communication sent by DES electronic transmission shall be complete on transmission.

5 ~~(25)~~(26) “Equity and good conscience” means fairness as applied to a given set of circumstances.

6 ~~(26)~~(27) “Fault” means an error or defect of judgment or of conduct; any deviation from prudence or duty
7 resulting from inattention, incapacity, perversity, bad faith, or mismanagement.

8 ~~(27)~~(28) “Good cause” means a legally sufficient reason.

9 ~~(28)~~(29) “In-person/telephone hearing” means an administrative hearing before the Appeals Section, Board
10 of Review, or other designated Hearing Officer where at least one party or witness appears in-person,
11 and another party or witness appears by telephone.

12 ~~(29)~~(30) “Interstate benefit payment plan” means the plan approved by the Interstate Conference of
13 Employment Security Agencies under which benefits may be paid to unemployed claimants absent
14 from the state (or states) where benefit wage credits accumulated. This ~~rule~~ Rule incorporates the
15 United States Department of Labor’s Interstate Benefit Payment Plan, Interstate Agreements, ET
16 Handbook No. 392 app. B (2d ed. 1997) by reference and includes subsequent amendments and
17 editions of the referenced material in accordance with G.S. 150B-21.6. Copies of the incorporated
18 material are located at 700 Wade Avenue, in Raleigh, North Carolina, and may be obtained by
19 request at no cost to the public by contacting DES as specified under 04 NCAC 24A .0201.

20 ~~(30)~~(31) “Interstate claimant” means a claimant who claims benefits under the unemployment insurance law
21 of one or more liable states through the facilities of an agent state, or directly with the liable state.
22 The term “interstate claimant” shall not include any claimant who customarily commutes from a
23 residence in an agent state to work in a liable state unless the Division finds that this exclusion would
24 create an undue hardship.

25 ~~(31)~~(32) “Labor dispute” means a dispute between an employer and its employees about wages, hours,
26 working conditions, or issues concerning the association or representation of persons in negotiating,
27 fixing, maintaining, changing, or seeking to arrange terms or condition of employment, between
28 those who could be concerned in the controversy.

29 ~~(32)~~(33) “Last known address” means the most recent address provided to DES by the claimant or taxpayer
30 located in its official record, except that DES shall update addresses maintained in its official records
31 by referring to data accumulated and maintained in the United States Postal Service (USPS) National
32 Change of Address database that retains change of address information (NCOA Database). If the
33 claimant or taxpayer’s name and last known address in DES’s official records match the claimant
34 or taxpayer’s name and previous mailing address contained in the NCOA database, the new address
35 in the NCOA database is the taxpayer’s last known address. This ~~rule~~ Rule incorporates the United
36 States Postal Service’s National Change of Address Database by reference and includes subsequent
37 amendments and editions of the referenced material in accordance with G.S. 150B-21.6. Copies of

the incorporated material are located at 700 Wade Avenue, in Raleigh, North Carolina, and may be obtained by request at no cost to the public by contacting DES as specified under 04 NCAC 24A .0201.

~~(33)~~(34) “Legal representative” means a licensed attorney or a person supervised by a licensed attorney.

~~(34)~~(35) “Liable state” means any state against which a claimant files a claim for benefits through another state.

(36) “NDNH” is an acronym, and means the National Directory of New Hires. NDNH is a national database of wage and employment information established by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and operated by the federal Office of Child Support Enforcement.

~~(35)~~(37) “Observation interval” means an interval of time including the four consecutive calendar years preceding the calendar year in which an application for a seasonal determination is made pursuant to G.S. 96-16. In the case of a newly liable employer or an employer whose operational activities have changed, the observation interval may be less than four calendar years.

(38) “Official record” means information in the records of a state or state unemployment compensation agency that pertains to the administration of the unemployment insurance program. Official records include claim information, wage information, confidential information, and unemployment compensation information as defined in 20 C.F.R. 603.2. Official records also include information provided by a federal, state, or private entity, or a claimant or employer for reliance upon, or use by the state in administering its unemployment insurance program.

~~(36)~~(39) “Party with appeal rights” means a party who has the right to appeal an unfavorable determination or decision pursuant to G.S. 96-4(q) and G.S. 96-15.

~~(37)~~(40) “Public employment office” means a local office managed and operated by the Division of Workforce Solutions (DWS) of the North Carolina Department of Commerce.

~~(38)~~(41) “Regularly recurring” means a period or periods of operational activity and shall be deemed regularly recurring if, during at least seventy-five percent of the calendar years in the observation interval, the beginning and ending dates of the period or periods do not vary more than four weeks.

~~(39)~~(42) “Reopened claim” means the resumption of a valid initial claim following a break in filing weekly certifications during a benefit year and the break was caused by reasons other than intervening employment. The first week of eligibility following the effective date of the reopened claim shall constitute a waiting period week if all eligibility requirements set forth in G.S. 96-14.9 are met.

~~(40)~~(43) “Reporting cycle” means the fifty-two week period beginning August 1st and ending July 31st the following year in which the employer’s account is examined and recorded for any inadequate responses to Requests for Separation Information (NCUI 500AB).

(44) “SCUBI” is an acronym, and means the Southeast Consortium Unemployment Benefits Initiative referenced in G.S. 96-40(b)(1). SCUBI is a multi-state consortia consisting of North Carolina, South Carolina, and Georgia.

1 (45) “SIDES” is an acronym, and means the State Information Data Exchange System. SIDES is a
2 secure, nationally standardized, web based system that allows electronic transmission of information
3 requests from DES to employers or third party administrators, as well as electronic transmission of
4 replies containing the requested information back to DES.

5 ~~(41)~~(46) “State” means any of the 50 states in the United States and includes the District of Columbia, Puerto
6 Rico, and the U.S. Virgin Islands.

7 (47) “Valid email address” means a unique identifier for an email account that is used to send and receive
8 messages over the internet, and is composed of three parts: the user name, the "at symbol" (@), and
9 the domain. To be valid, an email address must be one to which DES can send emails, and must be
10 provided to DES for use by the claimant, employer, legal representative, or other authorized
11 representative of the claimant or employer. The most recent email address provided to DES shall
12 be maintained in DES’s records, as the claimant’s or employer’s official email address.

13 ~~(42)~~(48) “Wages paid” means both wages actually received by a worker, and wages “constructively paid.”
14 Wages are constructively paid when they are credited to the account of, or set apart for a worker
15 without any substantial restriction as to the time or manner of payment or condition upon which
16 payment is to be made, and shall be made available so that the worker may draw upon them at any
17 time, and payment brought within the worker’s control and disposition, although not then actually
18 reduced to possession.

19 ~~(43)~~(49) “Wages payable” means wages earned but not paid.

20 ~~(44)~~(50) “Weekly period” means a seven day period beginning at 12:00 a.m. Sunday and ending on the
21 following Saturday at 11:59 p.m.

22 ~~(45)~~(51) “Week of unemployment” includes any week of unemployment as defined in the law of the liable
23 state from which benefits for the week are claimed.

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25 History Note: Authority G.S. 84; 96-1; 96-4; 96-9.2; 96-9.6; 96-14.1; 96-14.9; 96-15; 96-17; 96-20;
26 Eff. July 1, 2015;
27 Temporary Adoption Eff. March 1, 2016;
28 Temporary Adoption Expired December 10, 2016;
29 Amended Eff. April 1, 2017;
30 Amended Eff. September 1, 2017.